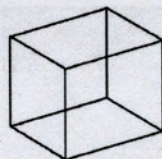


Do Not Read This Argument

By Robert W. Warrington

First printed in the *Isthmus*, November / December 2008



Human beings do not always do what they are told. In fact, many people do whatever they want unless the consequences outweigh the incentives. This is why breaking a law must result in undesirable consequences. In the past, civilized societies enforced their laws and sought to deter crime by providing consequences that would seem brutal today. Offenders could be publicly whipped, put in stocks, placed in outdoor cages, banished, or — in cases of murder or recidivism — they could even be publicly hanged (Morris et al, p.101). After the Revolutionary War, Americans looked back on the period of British rule and saw that, because the punishments were so harsh, juries were reluctant to convict all but the worst criminals. Punishment was so uncertain that criminals were actually encouraged to commit crimes (pp. 102-103). After some debate, a solution was devised. The old way of punishing offenders was replaced with the certainty of a very long incarceration — and the American prison system was born.

In the 220 years that followed, this institution of public service has experienced several periods of reform, brief high points in a long history of enforced idleness and persistent overcrowding. Today, society has come to expect a prison to do more than simply incapacitate the prisoner and deter crime. It must also punish the offender while at the same rehabilitating him. Having reached a fine balance between these four objectives, the current design of the prison system is incapable of achieving lasting success at any one of them, and a new way of looking at the problem is in order.

The primary objective, incapacitation, involves physically removing a person from society for a set period of time. Doing so ensures that, for however long he is held prisoner, that person is unable to do any more harm to those outside of the prison. It also reduces criminal activity due to the biological influence of the passage of time. Young people who are indigent or antisocial tend to ignore or discount the future, and they are therefore unwilling or unable to delay gratification of their desires — criminal or otherwise. As these youths mature in prison, or “age out,” they can develop the ability to take a long-term view of life and resist the need for immediate gratification (Siegel, p. 53). However, there are limits to the space and money available for incapacitation of criminals, and so prison administrators are tasked with the goal of confining the largest number of people at the lowest possible cost without violating any laws, statutes, or prisoner’s rights.

The original idea behind incapacitation was that the act alone would be enough. Looking back, it is easy to see how citizens of a new country that had just fought a war for independence might believe that the mere threat of losing one’s freedom would deter crime. Sadly, such was not the case then and is not the case today. Because prisons are not currently budgeted to incapacitate every criminal indefinitely, administrators must adjust the quality of incarceration so that it deters future crimes and/or reforms prisoners during their stay.

As a consequence of crime, prison is meant to deter two different portions of the population: those who have never been to prison, and those who have. However, people cannot be forced to value freedom as an end in itself. Therefore, in order to be an effective general deterrent to crime, prison needs to be an experience that is truly terrifying to the imaginations of those who have never been inside. In order to deter specific offenders, the prison experience needs to be so torturous that he or she fears to encounter it again.

At the same time, the prison is also expected to be a place of retribution, a place of punishment. Most would agree that anything can happen at any time. The average person, however, also needs to believe that by being good or by taking all of the right precautions he can avoid disaster (Brehm et al, p. 116). In a meaningful world, good things happen to good people, and bad things happen to bad people — hence the general public's psychological need to punish offenders. In the past, the judicial system used hard labor, years of solitary confinement, and corporal punishment in an attempt to exact retribution for the original crime and to maintain order within the prison (Morris et al, pp. 164-165). However, the current version of the prison punishes a man by regulating his space, time, and diet in order to produce in him various flavors of sadness, while the majority of his time slides by in pointless idleness and leisure. The essential element of the punishment is the removal of one's liberty and autonomy — although many small tortures come along with this broad definition: the foul but inescapable smell of a cell-mate's flatulence, the constant strip-searches and shake-downs, the Dear John letters, etc.

The prison is also expected to regulate a prisoner's space, time, and diet in order to produce a rehabilitative effect. Ideally, a rehabilitative environment would prepare a man to live a law-abiding and productive life in a capitalist democracy. A distinction would be made between the mentally ill, the mentally deficient, the men who are suffering from flawed inner-logic, and the men who are irrevocably malevolent — with treatment adjusted to the needs of each. The sentence would be one day to life, and the prisoner would not move on to a lower level of observation until he had proven himself ready. Those who prove to be a continued threat to society would not be unleashed on an unsuspecting public.

As the current system is designed, these four objectives become unattainable in any meaningful way for a number of reasons: First, prison fails as a deterrent because, unlike the punishments of the past, prison is not a public spectacle. It is an experience that takes place behind layers of security, and its presence is rarely felt or thought about.

Second, prison fails to deter crime because the court's protection of prisoner's rights and the public's call for rehabilitation prevents any physical abuse of prisoners. The average citizen understands what the average prisoner also understands: going to prison means living in a far-off place where men watch television all day, read books, play cards, and shoot basketballs. The media promotes images of prison rape and violence, but these images take on the same quality as cars that can talk and CSI units that solve every crime. It is make-believe. For sure, violence is always a possibility, but no more so than in the rest of the world.

To those who understand that liberty is essential to a quality life, prison is true psychological torture. To those who consider happiness and pleasure to be the same concept, prison is just a temporary inconvenience. In both cases, however, prison is a place that provides for a person's needs almost without effort. It is this distinction between what a person needs and what a person wants that makes the difference. The experience may even become a positive, unconscious incentive for recidivism if, in trying to get what he wants, the quality of a person's free life falls below the quality of his prison life, where he gets what he needs:

Third, prison fails as a punishment because, in order for it to succeed, society as a whole must agree that the offender's debt has been paid when a person leaves. As it currently stands, an offender's debt is never considered 'paid in full.'

And, finally, prison fails to rehabilitate because it is impossible to structure a person's space, time, and diet in a way that satisfies both the public's need for punishment and the prisoner's need for learning, healing, and positive work experience. When efforts are made to make prison a place where everyone is made fit for liberty, the public responds with demands for harsher sentencing (Morris et al, p. 217). When prison industries are developed to prepare a man to join the law-abiding work force, labor unions and local businesses cry about unfair competition (p. 220). The threat of cheap labor often overshadows the reality of the situation: Show men the benefits of work, or watch as they break laws and hurt innocent civilians. The general consensus is: *Nothing works, but try anyway — just don't try too hard.* What results is a cage that offers self-developmental opportunities for those who want them and a few jobs for those who are lucky. There is not, however, a concerted effort to use scientific methods to find out what works and to provide every last person with the best efforts of all involved.

I believe the lack of effectiveness in any of the four objectives actually encourages crime — much like the British methods of punishment did before the Revolutionary War. Now, a good argument will always acknowledge the merits of the other side and then proceed to refute each one. To that, I point to the picture of the Necker Cube underneath of the title of this argument. Notice how, if one focuses on the vertical line that appears farthest away, the cube seems to change. Back and forth the direction of the cube shifts, but nothing really changes. The only way to see the truth of the cube is from the inside. I am on the inside, and I see the truth.

I rest my case.

Having identified the problem, it would be rude to not offer a solution. I believe that one way to solve the problem is to separate the process of punishment and rehabilitation by creating two facilities. At the first facility, men would work to pay their debt, perhaps by sorting garbage for recycling — with Web cameras documenting the act. In order to punish a person so that afterward the debt is paid, the offender should be divested of some of his productivity. When a man agrees to work at a factory, he is not trading his labor for money, he is trading his productivity. When a man is given money for his productivity, he is given a unit of the entire nation's ability to produce. When a debt to society is incurred, a man should pay that debt with productivity, not with idle time.

After a specified time working at minimum wage — with deductions made for room, board, fines, and restitution — the prisoner's debt would be considered paid, and he would then be transferred to a 'rehabilitation' center, where his stay would be one day to life. The center would be a smaller, higher security version of a capitalist democracy. The beneficial treatment would not clash with the period of punishment, and those who would do harm to society would never leave — regardless of their original offense. This system would be more effective at deterring crime because working for minimum wage is far more terrifying than taking an all expense paid vacation. It would also allow a man to be incapacitated for life without necessarily punishing him for life. This is one idea among many. The point is that, just as our forefathers once realized, it is time for a drastic change in method. The current system just does not work.

References:

- Siegel, Larry J. *Criminology*. (2006). Belmont, CA: Thompson Wadsworth.
Morris, Norval, and David J. Rotham. (1998). *The Oxford History of Prison: The Practice of Punishment in Western Society*. Oxford University Press.
Brehm, Sharon S., Kassir, Saul, and Fein, Steven. (2005). *Social Psychology*. Boston, MA: Houghton Mifflin